

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF GROSSE ILE,

Plaintiff-Appellant,

v

GROSSE ILE BRIDGE COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 4, 2006

No. 255759

Wayne Circuit Court

LC No. 03-325491-CC

Before: Owens, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion to review necessity and dismissing the case in this condemnation action. We affirm.

Plaintiff argues that the trial court exceeded its authority by deciding that plaintiff abused its discretion in finding necessity to take defendant's toll bridge and that the matter should be remanded to a different trial judge. We disagree. The determination of public necessity by a public agency is binding on a court unless there is a showing of fraud, error of law, or abuse of discretion. MCL 213.56(2). A defendant has the burden of demonstrating an abuse of discretion by showing that the facts on which the agency's decision was made did not provide justification or excuse for the decision. *City of Novi v Adell Trusts*, 473 Mich 242, 254-255; 701 NW2d 144 (2005). We review the trial court's factual findings regarding public necessity for clear error and its legal conclusions de novo. *Id.*, p 249.

The township's condemnation power is expressly granted through its power to own and construct bridges under MCL 41.411(1)(a) and MCL 41.722(1)(c), combined with its general authority to condemn for public purposes in MCL 41.2(3). Before a condemnation is permitted, there must be a public necessity under MCL 213.56. *City of Novi, supra*, p 252. A condemning authority's grounds for a taking must include "a necessity now existing or which will exist in the near future, not an indefinite, remote or speculative future necessity." *City of Troy v Barnard*, 183 Mich App 565, 572; 455 NW2d 378 (1990), abrogated in part on other grounds *City of Novi, supra*, p 249 n 4. See also *Grand Rapids Bd of Ed v Baczewski*, 340 Mich 265, 272; 65 NW2d 810 (1954) ("necessity" under Const 1908, art 13, § 1, cannot be indefinite, remote, or

speculative).¹ “While ‘necessity’ has not been defined, the courts have considered the facts of each case and what authority has been granted under the applicable condemnation statute in reviewing for ‘necessity.’” *Nelson Drainage Dist v Filippis*, 174 Mich App 400, 404; 436 NW2d 682 (1989), abrogated in part on other grounds *City of Novi, supra*, p 249 n 4, citing *State Hwy Comm v Vanderkloot*, 392 Mich 159, 170; 220 NW2d 416 (1974).

Defendant presented testimony from the Wayne County Director of the Department of Public Works that he did not have specific dates for the bridge repairs on the county bridge – the only bridge other than the toll bridge that allowed vehicular access to Grosse Ile – but stated it would be in the following two to five years. He stated that current funding was not in place to repair the bridge, he did not know when funding would be available, and no detailed studies had been performed to determine the scope of the project. Moreover, he estimated that re-decking the county bridge would only take three to six months. The trial court correctly found that, because the closures of the county bridge were speculative and not permanent, they could not justify a permanent taking. *City of Troy, supra*, p 572.

Defendant presented evidence that private ownership of the bridge had not hindered the passage of emergency vehicles. Township Supervisor Douglas Jones did not know of problems with emergency vehicles using the toll bridge. He was unaware of how plaintiff would handle emergency traffic differently because it had not reviewed matters with the fire chief and police chief, and it was possible that it would be handled the same as it was being handled under defendant’s ownership. Jones stated that the closure of the toll bridge for the Atofina fire, a recent disaster that caused the evacuation of half the residents of Grosse Ile, would have been handled the same if plaintiff owned the toll bridge, but if an emergency required closing the county bridge, the toll bridge would have had to have been used for evacuation. Plaintiff’s emergency response plan did not require that the toll bridge be acquired for emergency purposes. The police chief had not recommended acquiring the toll bridge for emergency purposes. The trial court correctly found that, because there was no indication that defendant’s ownership of the bridge in any way hindered emergency vehicles, this purpose was speculative and could not justify the necessity of a taking. *City of Troy, supra*, p 572.

Defendant also presented evidence that Riverview Trenton Railroad (RTRR) had no intention of asserting the power of eminent domain on the toll bridge and, hence, this ground for a finding of necessity was purely speculative. Mickey Blashfield, director of Governmental Affairs for the RTRR and its community liaison, stated that the RTRR had absolutely no plans to acquire the toll bridge. Blashfield indicated he did not have the authority to make a commitment that the RTRR would never purchase or condemn the bridge, and that decision would be left to the company’s board of directors. The trial court correctly found that, because there was no indication that the RTRR had plans to take the toll bridge, this purpose was speculative and could not justify the necessity of a taking. *City of Troy, supra*, p 572.

¹ “The fact that in Michigan the term, “necessity,” is now of statutory rather than constitutional dimension in this context, does not abrogate its traditional sufficiency under the Michigan or United States Constitution.” *State Hwy Comm v Vanderkloot*, 392 Mich 159, 172, 191; 220 NW2d 416 (1974).

With respect to health, safety, and welfare purposes, defendant demonstrated there was not an overwhelming population growth, nor did the emergency concerns brought about by the Atofina incident necessitate a taking. Jones stated that the current population of the island was between eleven and fourteen thousand people, as reported by SEMCOG (Southeast Michigan Council of Governments). SEMCOG stated that the population of the island in 2005 was 11,048 and that by 2010 the population estimate would be 11,349. Plaintiff's emergency response plan did not indicate that the toll bridge needed to be condemned or acquired for emergency purposes. John Paul Smoke, defendant's owner, testified that when there was an emergency, defendant deferred control of the bridge to the emergency officials. Jones stated that the closure of the toll bridge for the Atofina fire would have been handled the same if plaintiff owned the bridge, but if an emergency required closing the county bridge, the toll bridge would have been used to evacuate. The police chief had not recommended acquiring the toll bridge for emergency purposes. The trial court correctly found that, because there was no indication of a large population growth, or a problem with evacuation in an emergency, this purpose was speculative and could not justify the necessity of a taking. *City of Troy, supra*, p 572.

Last, the trial court found no factual basis to support plaintiff's contention that condemnation of the toll bridge was necessary to benefit the public because plaintiff had access to federal and state funds for the maintenance and repair of the bridge. Because there was no indication that the bridge was in a state of disrepair or was inadequately maintained, the trial court correctly found that this stated purpose was speculative and could not justify the necessity of a taking. *City of Troy, supra*, p 572.²

Affirmed.

/s/ Donald S. Owens
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood

² Because of our resolution of the necessity issue, we need not consider plaintiff's argument that the case should be assigned to a different judge on remand.